

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

TOP GRADE EXCAVATING, INC.
Employer

and

Case 25-RD-124878

RUSSELL J. HORSFIELD
Petitioner

and

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL UNION NO. 150
Union

ORDER

The Employer's Request for Review of the Regional Director's administrative dismissal of the decertification petition is denied as it raises no substantial issue warranting review.¹

PHILIP A. MISCIMARRA, MEMBER

KENT Y. HIROZAWA, MEMBER

HARRY I. JOHNSON, III, MEMBER

Dated, Washington, D.C., February 18, 2015

¹ Member Miscimarra joins in denying review because, as the Regional Director found, the Employer has not employed any employees in the bargaining unit(s) specified in the Union's collective-bargaining agreements (CBAs) since 2012 and there are currently no eligible voters. Member Miscimarra further notes that (i) if the CBAs constituted prehire agreements authorized under Sec. 8(f) of the Act, they were effectively terminated by the Employer's February 26, 2014 letter, and the Employer had no subsequent ongoing bargaining obligation, *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd. sub nom. *IAM Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), cert. denied 488 U.S. 889 (1988); and (ii) if the CBAs extended recognition based on a showing of majority support pursuant to Sec. 9(a), the Employer's letter lawfully withdrew recognition at a time when the Employer had a stable workforce of fewer than two unit employees, see *McDaniel Electric*, 313 NLRB 126, 127 (1993). In either case, Member Miscimarra observes that dismissal of the petition is appropriate based on the absence of a question concerning representation, *Davey McKee Corp.*, 308 NLRB 839, 840 (1992), and given the absence of any current bargaining obligation or applicable agreement, the Board need not reach or pass on whether the CBAs extended recognition pursuant to Sec. 8(f) or 9(a). Cf. *Staunton Fuel & Material*, 335 NLRB 717, 720 (2001) (regarding potential conversion of 8(f) agreement into 9(a) agreement); *Nova Plumbing, Inc. v. NLRB*, 330 F.3d 531 (D.C. Cir. 2003) (same).